

R E M A R K S

Claims **1 - 25** are pending in the present application.

Claims **1 - 15** are rejected.

Claims **1, 2, 3, 5, 10, 12, 13 and 15 - 25** are independent.

Section 101 Rejections - Technological Arts Requirement

Claims **1 and 2** stand rejected as being non-statutory. Applicants traverse the Examiner's Section 101 rejection. There has been no *prima facie* showing of unpatentability of either claim **1 or 2**.

In the rejection of claims **1 and 2**, the Examiner has asserted only that the claims are directed to:

a machine-readable medium without the computer/machine needed to realize the machine-readable medium's functionality.

There is no discussion or reasoning why such a condition, even if true, would render a claim nonstatutory. As best as we can understand the Examiner's argument, the contention is that a claim is nonstatutory if that the claim does recite all components necessary to "realize" the product's "functionality". The Examiner has provided neither a case citation nor an MPEP provision for this contention.

In fact, many product claims are statutory even absent a recitation of components such as, e.g., a power supply, which the product may need for its full "functionality".

Each of claims **1 and 2** recite a product that indisputably has a useful, concrete and tangible result. The Examiner has not alleged otherwise. Thus, both

claims **1 and 2** recite statutory subject matter, and there is not even an allegation that, if true, would demonstrate the claims to be nonstatutory.

Section 101 Rejections - Technological Arts Requirement

Claims **3 - 15** stand rejected as being non-statutory. Applicants traverse the Examiner's Section 101 rejection.

The Examiner has used an improper standard in rejecting the claims, and has failed to use the proper legal standard for determining compliance with 35 U.S.C. § 101.

The claims are rejected for not being "within the technological arts". Since there is no technological arts requirement, this rejection is improper. See, e.g., Ex parte Lundgren, Appeal No. 2003-2088 (BPAI 2005).

The legal test for the presence of statutory subject matter is only that a claimed process or apparatus produce a "useful, concrete and tangible result". See, e.g., State Street Bank & Trust Co. v. Signature Fin. Group, Inc., 149 F.3d 1368, 1375, 47 U.S.P.Q.2D 1596 (Fed. Cir. 1998), cert. denied, 525 U.S. 1093, 142 L. Ed. 2d 704, 119 S. Ct. 851 (1999)

The Examiner agrees with the Applicants that the claims produce a useful, concrete and tangible result. Office Action, page 7, 1st paragraph. Therefore, the claims are necessarily statutory.

Conclusion

For the foregoing reasons it is submitted that all of the claims are now in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remains any question regarding the present application or any of the cited references, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Dean Alderucci at telephone number 203-461-7337 or via electronic mail at Alderucci@WalkerDigital.com.

Respectfully submitted,



Dean Alderucci
Attorney for Applicants
Registration No. 40,484
Alderucci@WalkerDigital.com
203-461-7337 / voice
203-461-7018 / fax

November 29, 2005
Date